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September 1, 2017

BY HAND DELIVERY

Ms. Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

OFFICE OF GENERAL
COUNSEL

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Re: MUR 7261 - Response of Levi for Colorado and Paula Sandoval, in her capacity as Treasurer, & Mr. Levi Tillemann

Dear Ms. Stevenson:

This response is submitted on behalf of the above-referenced respondents in relation to the July 13, 2017, letter from the Commission notifying Levi for Colorado (the "Campaign"), Ms. Paula Sandoval and Mr. Levi Tillemann (collectively, the "Tillemann Respondents") of a complaint (the "Complaint") filed by Ms. Patricia Ann Noonan (the "Complainant"), designated by the Commission as MUR 7261.¹

Pursuant to section 100.72 of the Commission's regulations, anyone who is considering a run for federal office may raise and spend funds to "test the waters" so long as the funds are not "received for activities indicating that [the] individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign." 11 C.F.R. § 100.72(b).

Levi Tillemann did not become a candidate until June 27, 2017, the day on which Mr. Tillemann made a private determination to run for the House seat in Colorado's Sixth Congressional District

¹ The Commission's letter incorrectly appears to refer to Mr. Tillemann as the Campaign's Treasurer. See Levi for Colorado Statement of Organization, available at <http://docquery.fec.gov/pdf/997/201707109066574997/201707109066574997.pdf>. This response is filed timely pursuant to an extension granted on July 25, 2017.



office,² and, as detailed below, the Complaint does not point to a single instance where either Mr. Tillemann or the Campaign engaged in any activity that indicates otherwise. Accordingly, the Complaint should be dismissed.

As an initial matter, it should be noted that the Complaint is dated July 7, 2017 – more than a week after Mr. Tillemann became a candidate – and that four out of the five statements reflected in the Complaint (the so-called “evidence”) are undated. Accordingly, separate from the fact that none of the statements contained in the Complaint in any way suggests, in and of itself, a reason to believe that Mr. Tillemann had decided to run for office prior to June 27, as for four of these statements, the Complainant has not even asserted that the statements are drawn from a time prior to Mr. Tillemann’s June 27 decision to run.³

Taking each statement contained in the Complaint in turn:

Purported “Evidence A” – This is an undated Facebook posting dominated almost entirely by a quote from coloradopolitics.com, a website that covers Colorado politics.⁴ The quoted coverage clearly indicates that Mr. Tillemann “isn’t a declared candidate” and that “he’s only set up an exploratory committee as he considers a run . . .” with a headline referring to Mr. Tillemann as a “Colorado CD-6 prospect.” It simply could not be clearer from this posting that Mr. Tillemann had not yet decided whether to become a candidate. Other than the quoted coverage, the only other text in the Facebook posting is an introductory comment stating that this is “[m]ore great coverage on Levi!”

To the extent that the Complaint is asserting that this Facebook posting was a “paid” ad, the exploratory committee did pay a nominal fee to Facebook to “boost” the posting but this was entirely consistent with Mr. Tillemann’s testing the waters activity.⁵ There is nothing in the posting to indicate that Mr. Tillemann had decided to run for office and, in fact, this posting was used by Mr. Tillemann as a way to gauge support for his possible candidacy (*i.e.*, polling) by tracking how many “likes” the Facebook posting received.

Purported “Evidence B” – In this – the one dated statement reflected in the Complaint – the Complainant does not point to any spending or to any campaign activity whatsoever. This Facebook posting does not make any mention of an election or of any candidacy. In fact, nothing related to the posting even comes close to campaigning. Also, no funds were expended related to

² It was not until almost two weeks later – on July 9, 2017 – that Mr. Tillemann publicly announced his candidacy. See e.g., <http://denver.cbslocal.com/2017/07/09/levi-tillemann-launches-campaign/>; <http://www.aurorasentinel.com/z-news/tillemann-campaign/>.

³ Accordingly, the Complaint falls short of the requirements in 11 C.F.R. § 111.4(d)(3) (a complaint must “contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction”).

⁴ See <https://coloradopolitics.com/about/>.

⁵ More information on “boosting” Facebook posts can be found at <https://www.facebook.com/business/help/547448218658012>.



the video linked in the posting, which was filmed in a public park by one of Mr. Tillemann's friends who received no compensation.

Purported "Evidence C" – this is an undated tweet sent from Mr. Tillemann's personal Twitter account responding to a tweet from someone described in the Complaint to be "the Republican incumbent's spokesman." Mr. Tillemann is in no way holding himself out as a candidate and as even the Complaint concedes, given that the primary is still nearly a year away, it would be both legally and logically impossible for Mr. Tillemann to hold himself out as a candidate for the "hypothetical" general election.

Purported "Evidence D" – Although the complaint alleges that "Evidence D" is taken from the Campaign's website, this quote appears to be from the Levi Tillemann Exploratory Committee's Crowdpac page.⁶ Again, the Crowdpac page could not be clearer that at the time, Mr. Tillemann was only "exploring a run" and nothing in the copied quote is "evidence" to the contrary.

Purported "Evidence E" – This language does not in any way refer to Mr. Tillemann as a candidate and the quote contains nothing more than general aspirations. In any event, although this language does appear on the Campaign's website,⁷ the Complainant has not presented any allegation or information that the language appeared before Mr. Tillemann decided to run on June 27.

Finally, although the Complaint erroneously concludes that Mr. Tillemann and his campaign committee have somehow "fail[ed] to file disclosure reports," nothing could be further from the truth. The Committee timely filed its FEC Form 1 Statement of Organization on July 10, 2017,⁸ and when the Committee files its first regularly scheduled FEC Form 3 Report of Receipts and Disbursements on October 15, 2017, that report will reflect *all* campaign activity up to and through September 30, 2017, including activity extending back to the testing the waters period as required by section 100.72(a) of the Commission's regulations, 11 C.F.R. § 100.72(a).

Accordingly, for all of the reasons set forth above, and pursuant to 52 U.S.C. § 30109, the matter should be dismissed.

Respectfully Submitted,

Brad Deutsch
Counsel to Levi for Colorado
and Mr. Levi Tillemann

GSB:8841480.4

⁶ See <https://www.crowdpac.com/campaigns/242488/support-levi-tillemanns-exploratory-committee>.

⁷ See <https://www.leviforcolorado.com/get-involved>.

⁸ See 11 C.F.R. § 101.1(a); 11 C.F.R. § 102.1(a). Mr. Tillemann decided to run on June 27, 2017, and then filed his Statement of Candidacy on FEC Form 2 twelve days later on July 9, 2017 (the same day as his public announcement). The Committee filed its Statement of Organization the very next day, on July 10, 2017.